

**MINUTES OF THE SPECIAL JOINT MEETING OF THE
COMMON COUNCIL AND UTILITY SERVICE BOARD OF THE
CITY OF JASPER, INDIANA
OCTOBER 25, 2010**

A joint meeting of the Common Council and Utility Service Board of the City of Jasper, Indiana, was held on Monday, October 25, 2010, in the Council Chambers of City Hall located at 610 Main Street, Jasper, Indiana.

Call to Order. Presiding Officer Mayor William J. Schmitt called the joint Common Council and Utility Service Board meeting to order at 5:30 p.m.

COMMON COUNCIL ROLL CALL:

Mayor William J. Schmitt	Present
Council members:	
John Schroeder	Present
David Prechtel	Present
Thomas Schmidt	Present
Ambrose 'Butch' Schitter	Present
Kevin Manley	Absent
Randall Buchta	Present
Raymond Howard	Present
City Attorney Sandra Hemmerlein	Present
Clerk-Treasurer Juanita S. Boehm	Absent

Mayor William J. Schmitt announced that in order to have a quorum for the meeting, a majority of the council members must be in attendance. Six of the seven council members were in attendance; therefore, there was a quorum for the meeting.

UTILITY SERVICE BOARD ROLL CALL:

Wayne Schuetter – Chairman
Rick Stradtner – Vice Chairman
Mike Harder – Secretary
Doug Schulte – Water Commissioner
Alex Emmons – Wastewater Commissioner
Greg A. Krodel – Gas Commissioner
Ken Sendelweck – Electric Commissioner

ALSO PRESENT:

Jerry Schitter – Electric Distribution Manager
Windell Toby – Electric Generation Manager
Bud Hauersperger – General Manager
Sandy Hemmerlein – City Attorney

ABSENT:

Michael A. Oeding – Gas & Water Manager
Ed Hollinden – Wastewater Manager

Pledge. Mayor Schmitt then invited those in attendance to join him in reciting the Pledge of Allegiance.

Purpose. Mayor Schmitt explained that the purpose of the joint meeting is to discuss the power plant. The first issue for discussion is what type of ‘disposal’ to proceed with. The disposal options are the sale, lease, transfer or exchange of the power plant.

Discussion between the boards took place to determine the best option for the City.

Utility Service Board Chairman Wayne Schuetter explained that choosing an option for disposal does not mean the City must proceed with the disposal. It also does not mean that other types of disposal will not continue to be considered. It simply means the City can then move along in the process for disposal. All kinds of options were presented for disposal.

The options of exchange or transfer of the power plant were not viable options. There were no offers for this type of disposal. That left the remaining two options of sale or lease. There are pros and cons to both of these options.

One of the pros for the sale of the power plant is that it would rid the City of all financial risk related to the property. It would also eliminate the City’s obligation on any future maintenance and employee costs. Another pro would possibly be the retention of the power plant employee’s jobs.

One of the cons on the sale of the power plant would be that the City would lose all control on what goes on at the power plant. The City would also only receive money from the sale of the plant one time and could lose out on any future revenue the plant could produce. Mayor Schmitt said the only control the City would have would be on the zoning of the property, and not any of the operations. City Attorney Sandy Hemmerlein stated that the City could sell with terms and conditions, but the control would be limited to those terms and conditions. If the company does not follow the terms and conditions of the sale, there would not be many options to enforce those terms besides filing a lawsuit. Ken Sendelweck mentioned that the financial realities need to be part of the plan. Some of the companies out there wanting to buy the property would be “stealing” or “bottom fishing” by not offering a fair price of what the City thought the power plant would be worth. Chairman Schuetter said he does not feel comfortable with the option of selling the power plant for the citizens and ratepayers of the City.

Chairman Schuetter then discussed the pros and cons of leasing the power plant. He said on pro is that the City would maintain ownership of the property. Conditions can be put into the lease and if any proposing companies cannot meet those conditions, then the City

could choose not to proceed with the lease of the property. Another pro would be the City would be able to retain and possibly expand employment opportunities. There could also be consistent long term revenue possibilities for the City.

Schuetter said a con about leasing the power plant is that the City would be committed to the lease for the full term of the lease, even if other possible opportunities became available. Also, the current employees at the power plant may not be City employees anymore, but rather employees of the firm leasing the power plant.

Schuetter said penalties could also be put into the terms of the lease if the firm is not holding up to the environmental standards, benchmarks, etc. put into the lease. He said a lease would at least give the City some control and limit the exposure on what is going on at the power plant as a sale would not.

Mayor Schmitt commented that there have been no negotiations yet with prospective firms and he does not want to make any premature speculations as to what a possible lease agreement may entail. The purpose of the meeting is to simply hone in on which disposal option the City would like to proceed with.

Greg Krodel said that he prefers the leasing option so the City could maintain control over the power plant. Ken Sendelweck agreed and said that a lease would be an ongoing partnership whereas a sale would be a one-time transaction.

Tom Schmidt asked if the plant was leased what kind of scrubbers would be put on the plant. Wayne Schuetter said that this type of request would be covered under the details of the lease agreement. If the firm selected says they cannot meet the specifications or conditions of what the City wrote into the lease agreement, then the City would not follow through with the lease. Tom Schmidt said he would be okay with a lease as long as what came out of the stacks was safe for the public. Ambrose 'Butch' Schitter said he also felt that proceeding with a lease option would be the best way to go.

Wayne Schuetter said since the Utility Service Board is technically the 'disposing agency' they should make the first motion on which option to proceed with.

Chairman Wayne Schuetter asked for a Motion to pursue a lease as the method of 'disposal' of the power plant property. A motion was made by Ken Sendelweck and seconded by Doug Schulte to pursue a lease as the method of 'disposal' of the power plant property. Motion carried 7-0.

Mayor Schmitt then asked for a Motion from the Council to concur with the Utility Service Board's motion to proceed with a lease. A motion was made by Council member Ambrose 'Butch' Schitter and seconded by Council member Randy Buchta to concur with the Utility Service Board's motion to pursue a lease as the method of 'disposal' of the power plant property. Under discussion, City Attorney Sandy Hemmerlein clarified that this concurring motion by the Council is not the 'approval' contemplated by I.C. 36-1-11-3(c). This statute requires the council's approval on every

lease of real property for which the total annual rental payments will be \$25,000 or more. We do not know what those rental payments might be at this time. This approval will be sought as one of the final steps in the process, if at all. Motion carried 6-0.

City Attorney Sandy Hemmerlein explained that there are two methods allowed by Indiana law to pursue a lease of the power plant property - I.C. 36-1-11-10 or 12. Under Section 10, the City must have the property appraised by 2 appraisers meeting requirements of the statute, which includes using 2 employees to complete the appraisals. The appraisers would conduct a 'joint appraisal'. The City would then give notice with terms and conditions of sale and use an auctioning or bidding procedure. The City would have to get at least 90% of fair market rental value as a result of the first bidding procedure or the City would have to re-advertise and go through bidding again in order to accept less than 90% of the fair market rental value of the property. The law requires that the City sell the property to the 'highest and best bidder'.

The other option - Section 12 – is only allowed if there is a written determination that Section 10 is not feasible and authorization is agreed to by the Mayor. The City would develop specifications and solicit through Request for Proposals. The City is required to publish notice and may hold discussions with any offerors. The law states that the City would enter into an agreement with the offeror with the 'most appropriate response'.

Hemmerlein presented the boards with USB Resolution No. 2010-18. She stated that it would be very difficult, if not impossible to come up with a fair market rental value. This is evident from the values that Black and Veatch presented in their report for the value of the property. It would difficult to find two appraisers who could provide us with a fair value. The alternate lease method seems to give more leeway to the City in negotiation with any prospective offerors and allows for things other than price to be taken into account to determine the 'most appropriate response.'

Mayor Schmitt and Chairman Wayne Schuetter both felt that the alternative method in Section 12 would be the best way to proceed with this option to lease.

Tom Schmidt asked what it would take to dismantle the plant. Wayne Schuetter said they have looked into it and the figures could vary greatly. They have numbers for strictly dismantling the plant, but as dismantling proceeded, they could run into environmental issues, which could drive the amount sky high. It is also hard to predict what it would cost to dispose of the dismantled pieces.

Mayor Schmitt asked Hemmerlein to read Sections 1 (a) and (b) of the Resolution for all to hear. She did so. In so doing, it was discovered that the word 'property' in the first line of Section 1(b) should be changed to 'value'.

Chairman Wayne Schuetter then asked for a Motion to approve Resolution #USB 2010-18 and use the alternate lease procedure as allowed by Indiana law, with a correction of the word 'property' to 'value.' A motion was made by Mike Harder and seconded by Rick Stradtner to approve Resolution #USB 2010-18 and use the alternate lease

procedure as allowed by Indiana law, with the correction of the word 'property' to 'value.' Motion carried 7-0.

Mayor Schmitt then asked for a Motion from the Council to concur with the Utility Service Board's motion to use the alternate lease procedure as allowed by Indiana law. A motion was made by Council member Dave Prechtel and seconded by Council member John Schroeder to concur with the Utility Service Board's motion to use the alternate lease procedure as allowed by Indiana law. Motion carried 6-0.

Sandy Hemmerlein told the Mayor that pursuant to Indiana Code, he must also approve the use of the alternate procedure for the leasing option. Mayor Schmitt stated that he approves of using the alternate procedure.

Wayne Schuetter said the next step would be to send out a new Request for Proposals with the condition of the lease option included. Schuetter gave a brief overview of the project to date and said he considered the process until now to be 'research.' Schuetter said the focus now should be on what is the best biomass fuel source. Schuetter feels the fuel source should be a reliable, sustainable biofuel crop, and this type of fuel source should be added to the new Request for Proposals.

Schuetter said everyone has received a new 'rough draft' for a Request for Proposals. He asked that the RFP be reviewed piece by piece by the Utility Service Board and Common Council to get everyone's opinion and changes they would like to see made.

Much discussion followed on the changes to be made to the 'draft' Request for Proposals and how restrictive to be in the RFP to still allow room for negotiations. The groups looked for a balance between being detailed to expedite negotiations and being too detailed that it scares off respondents.

The changes to be made to the draft Request for Proposals are as follows:

- 'Utility Service Board' should be added to the Introduction in two locations to indicate that the Board will be receiving the Proposals.

- In Section I, Objectives/Preferences #1, should be changed to 'are determined not to negatively impact the health and/or environment of the Citizens of Jasper or Dubois County.

- In Section I, Objectives/Preferences, a new # 6 should be added to say 'which considers retention alternatives for current power plant employees.

- In Section II, 3.5 the words 'Independently audited' should be added to the beginning of the first sentence.

- In Section II, 5.7 third bullet should clarify 'sustainability' refers to the fuel source.

- In Section II, 5.7 fourth bullet should clarify that this refers to neighbors near to the power plant.

- In Section II, 5.7 sixth bullet should be changed to say 'Compliance plans and pollution control technology to be utilized to meet or exceed federal and state standards

(including MACT) so as to not negatively impact the health and/or environment of the citizens of Jasper and Dubois County.

- In Section II, 5.7, two new bullets should be added as follows:

- Detail conditions and requirements for production of the proposed sustainable dedicated biofuel crop(s) such as, total acres needed, water demands, fertilization requirements, etc.

- Detail possible environmental impacts of proposed sustainable dedicated biofuel crop(s) and cite research about such impacts and the procedures to limit them.

- In Section II, 10.5, additional language should be added to clarify that City may also require letter of credits or bonds to make sure plant is returned to operational condition if company defaults.

- Date to receive proposals should be changed to December 13, 2010 and then paragraph 2 in Section III should be changed to January 2011 to select a firm and April 2011 to enter into an agreement.

Chairman Wayne Schuetter then asked for a Motion to approve the new Request for Proposals with the changes as indicated. A motion was made by Greg Krodel and seconded by Rick Stradtner to approve the new Request for Proposals with the changes as indicated. Attorney Bill Kaiser said the RFP's should be ready for release by Wednesday. Motion carried 7-0.

Mayor Schmitt then asked for a Motion from the Council to concur with the Utility Service Board's motion to approve the new Request for Proposals with the changes as indicated. A motion was made by Council member Ambrose 'Butch' Schitter and seconded by Council member Randy Buchta to concur with the Utility Service Board's motion to approve the new Request for Proposals with the changes as indicated. Motion carried 6-0.

Sandy Hemmerlein said we now need to backtrack and reject the initial Requests for Proposals that were submitted with a due date of July 1, 2010 and then extended to August 6, 2010.

Chairman Wayne Schuetter then asked for a Motion to reject all proposals received from the Request for Proposals with a due date of July 1, 2010 extended to August 6, 2010. A motion was made by Ken Sendelweck and seconded by Alex Emmons to reject all proposals received from the Request for Proposals with a due date of July 1, 2010 extended to August 6, 2010. Motion carried 7-0.

Mayor Schmitt then asked for a Motion from the Council to concur with the Utility Service Board's motion to reject all proposals received from the Request for Proposals with a due date of July 1, 2010 extended to August 6, 2010. A motion was made by Council member Tom Schmidt and seconded by Council member John Schroeder to concur with the Utility Service Board's motion to reject all proposals received from the Request for Proposals with a due date of July 1, 2010 extended to August 6, 2010. Motion carried 6-0.

City Attorney Hemmerlein informed the boards that letters would be sent to those four companies that submitted a proposal informing them of the Utility Service Board's action. If any of those companies want to be considered with the new Request for Proposals, they will need to resubmit their proposal following the new guidelines.

Other Common Council Business. With the business of the power plant concluded, the Mayor indicated that the Council had one more piece of business to address at the meeting. He asked Attorney Hemmerlein to give the background on the Resolution that the Council was to consider. Hemmerlein informed the Council that Lisa Gehlhausen of Indiana 15 had been in to City Hall earlier today to go over a list of items that she had received from OCRA on the Beaver Lake grant application. There were several items that had either been left out or not prepared the way that OCRA wanted. One of the items was the Resolution – Resolution No. 2010-2 - that had been adopted by the Council in May of this year. OCRA asked that the match for the grant from OCRA be restated. The new Resolution for consideration indicates the funds that are committed and where they come from, including the grant amount already received from EDA, while Resolution 2010-2 just indicated the amount of match that the City was agreeing to - \$315,000.00 at that time.

Resolution No. 2010-7 was then read as follows:

RESOLUTION NO. 2010-7 A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF JASPER, INDIANA AUTHORIZING THE SUBMITTAL OF THE DISASTER APPROPRIATION II APPLICATION TO THE INDIANA OFFICE OF COMMUNITY AND RURAL AFFAIRS, LOCAL MATCH COMMITMENT AND ADDRESSING RELATED MATTERS

A motion was made by Council member John Schroeder, seconded by Council Member Dave Prechtel and approved 6-0 to consider the resolution for one reading only. Thereafter, a motion was made by Council member Ambrose 'Butch' Schitter, seconded by Council member Tom Schmidt and approved 6-0 to have the resolution read by title only. The resolution was so read. Thereafter, a motion was made by Council member John Schroeder and seconded by Council member Tom Schmidt to pass and adopt Resolution No. 2010-7. Motion carried 6-0.

Under discussion, City Attorney Sandy Hemmerlein informed the Council that this resolution replaces an earlier resolution approved by the Council giving authorization to submit an application to OCRA for grant funding for the Beaver Creek Lake Dam Improvement project and commit local matching funds.

Other Utility Service Board Business. Bud Hauersperger said that Mike Oeding received a letter of resignation from Herb Bohnert. Bohnert will be retiring on December 16th. Hauersperger asked for permission to start the process for replacing Bohnert.

Alex Emmons made a motion giving Hauersperger and Oeding permission to start the process for replacing Bohnert. Mike Harder seconded the motion. Motion carried 7-0.

Ken Sendelweck then asked the Utility Service Board to consider looking for other alternatives for the power plant and costs for dismantling the power plant. Hauersperger said Windell Toby will be attending a meeting on November 9th with other cities' power plants in Indiana that are in similar circumstances to Jasper.

Adjournment by Council. There being no further business to come before the Council, a motion was made by Council member Tom Schmidt and seconded by Council member Dave Prechtel to adjourn the meeting. The motion carried 6-0 and the meeting adjourned at 7:29 p.m.

Adjournment by Utility Service Board. There being no further business to come before the Utility Service Board, the meeting was adjourned at 7:29 PM upon motion by Alex Emmons and second by Greg Krodel. Motion approved, 7-0

The minutes were hereby approved by the Common Council ____ with ____ without corrections or clarification this ____ day of _____, 2010.

Mayor William J. Schmitt
Presiding Officer

Attest:

Juanita S. Boehm, Clerk-Treasurer

The minutes were hereby approved by the Utility Service Board _____ with _____ without corrections or clarification this _____ day of _____, 2010.

Attest: _____
Secretary

Chairman

Ashley Kiefer, Recording Secretary